

## § 11.61

## 37 CFR Ch. I (7–1–12 Edition)

or subversive to the public interest; and

(3) That the suspended practitioner has complied with the provisions of § 11.58 for the full period of suspension, that the excluded practitioner has complied with the provisions of § 11.58 for at least five continuous years, or that the resigned practitioner has complied with § 11.58 upon acceptance of the resignation.

(d) *Petitions for reinstatement—Action by the OED Director granting reinstatement.* (1) If the excluded, suspended or resigned practitioner is found to have complied with paragraphs (c)(1) through (c)(3) of this section, the OED Director shall enter an order of reinstatement, which shall be conditioned on payment of the costs of the disciplinary proceeding to the extent set forth in paragraphs (d)(2) and (3) of this section.

(2) *Payment of costs of disciplinary proceedings.* Prior to reinstatement to practice, the excluded or suspended practitioner shall pay the costs of the disciplinary proceeding. The costs imposed pursuant to this section include all of the following:

(i) The actual expense incurred by the OED Director or the Office for the original and copies of any reporter's transcripts of the disciplinary proceeding, and any fee paid for the services of the reporter;

(ii) All expenses paid by the OED Director or the Office which would qualify as taxable costs recoverable in civil proceedings; and

(iii) The charges determined by the OED Director to be "reasonable costs" of investigation, hearing, and review. These amounts shall serve to defray the costs, other than fees for services of attorneys and experts, of the Office of Enrollment and Discipline in the preparation or hearing of the disciplinary proceeding, and costs incurred in the administrative processing of the disciplinary proceeding.

(3) An excluded or suspended practitioner may be granted relief, in whole or in part, only from an order assessing costs under this section or may be granted an extension of time to pay these costs, in the discretion of the OED Director, upon grounds of hard-

ship, special circumstances, or other good cause.

(e) *Petitions for reinstatement—Action by the OED Director denying reinstatement.* If the excluded, suspended or resigned practitioner is found unfit to resume the practice of patent law before the Office, the OED Director shall first provide the excluded, suspended or resigned practitioner with an opportunity to show cause in writing why the petition should not be denied. Failure to comply with § 11.12(c) shall constitute unfitness. If unpersuaded by the showing, the OED Director shall deny the petition. The OED Director may require the excluded, suspended or resigned practitioner, in meeting the requirements of § 11.7, to take and pass an examination under § 11.7(b), ethics courses, and/or the Multistate Professional Responsibility Examination. The OED Director shall provide findings, together with the record. The findings shall include on the first page, immediately beneath the caption of the case, a separate section entitled "Prior Proceedings" which shall state the docket number of the original disciplinary proceeding in which the exclusion or suspension was ordered.

(f) *Resubmission of petitions for reinstatement.* If a petition for reinstatement is denied, no further petition for reinstatement may be filed until the expiration of at least one year following the denial unless the order of denial provides otherwise.

(g) *Reinstatement proceedings open to public.* Proceedings on any petition for reinstatement shall be open to the public. Before reinstating any excluded or suspended practitioner, the OED Director shall publish a notice of the excluded or suspended practitioner's petition for reinstatement and shall permit the public a reasonable opportunity to comment or submit evidence with respect to the petition for reinstatement.

### § 11.61 Savings clause.

(a) A disciplinary proceeding based on conduct engaged in prior to September 15, 2008 may be instituted subsequent to such effective date, if such conduct would continue to justify suspension or exclusion under the provisions of this part.

(b) No practitioner shall be subject to a disciplinary proceeding under this part based on conduct engaged in before the effective date hereof if such conduct would not have been subject to disciplinary action before September 15, 2008.

(c) Sections 11.24, 11.25, 11.28 and 11.34 through 11.57 shall apply to all proceedings in which the complaint is filed on or after the effective date of these regulations. Section 11.26 and 11.27 shall apply to matters pending on or after September 15, 2008.

(d) Sections 11.58 through 11.60 shall apply to all cases in which an order of suspension or exclusion is entered or resignation is accepted on or after September 15, 2008.

#### §§ 11.62–11.99 [Reserved]

### PARTS 15–15a [RESERVED]

## PART 41—PRACTICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

### Subpart A—General Provisions

Sec.

- 41.1 Policy.
- 41.2 Definitions.
- 41.3 Petitions.
- 41.4 Timeliness.
- 41.5 Counsel.
- 41.6 Public availability of Board records.
- 41.7 Management of the record.
- 41.8 Mandatory notices.
- 41.9 Action by owner.
- 41.10 Correspondence addresses.
- 41.11 *Ex parte* communications in *inter partes* proceedings.
- 41.12 Citation of authority.
- 41.20 Fees.

### Subpart B—*Ex Parte* Appeals

- 41.30 Definitions.
- 41.31 Appeal to Board.
- 41.33 Amendments and affidavits or other Evidence after appeal.
- 41.35 Jurisdiction over appeal.
- 41.37 Appeal brief.
- 41.39 Examiner's answer.
- 41.40 Tolling of time period to file a reply brief.
- 41.41 Reply brief.
- 41.47 Oral hearing.
- 41.50 Decisions and other actions by the Board.
- 41.52 Rehearing.
- 41.54 Action following decision.

### Subpart C—*Inter Partes* Appeals

- 41.60 Definitions.
- 41.61 Notice of appeal and cross appeal to Board.
- 41.63 Amendments and affidavits or other evidence after appeal.
- 41.64 Jurisdiction over appeal in *inter partes* reexamination.
- 41.66 Time for filing briefs.
- 41.67 Appellant's brief.
- 41.68 Respondent's brief.
- 41.69 Examiner's answer.
- 41.71 Rebuttal brief.
- 41.73 Oral hearing.
- 41.77 Decisions and other actions by the Board.
- 41.79 Rehearing.
- 41.81 Action following decision.

### Subpart D—Contested Cases

- 41.100 Definitions.
- 41.101 Notice of proceeding.
- 41.102 Completion of examination.
- 41.103 Jurisdiction over involved files.
- 41.104 Conduct of contested case.
- 41.106 Filing and service.
- 41.108 Lead counsel.
- 41.109 Access to and copies of Office records.
- 41.110 Filing claim information.
- 41.120 Notice of basis for relief.
- 41.121 Motions.
- 41.122 Oppositions and replies.
- 41.123 Default filing times.
- 41.124 Oral argument.
- 41.125 Decision on motions.
- 41.126 Arbitration.
- 41.127 Judgment.
- 41.128 Sanctions.
- 41.150 Discovery.
- 41.151 Admissibility.
- 41.152 Applicability of the Federal Rules of Evidence.
- 41.153 Records of the Office.
- 41.154 Form of evidence.
- 41.155 Objection; motion to exclude; motion in limine.
- 41.156 Compelling testimony and production.
- 41.157 Taking testimony.
- 41.158 Expert testimony; tests and data.

### Subpart E—Patent Interferences

- 41.200 Procedure; pendency.
- 41.201 Definitions.
- 41.202 Suggesting an interference.
- 41.203 Declaration.
- 41.204 Notice of basis for relief.
- 41.205 Settlement agreements.
- 41.206 Common interests in the invention.
- 41.207 Presumptions.
- 41.208 Content of substantive and responsive motions.

AUTHORITY: 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 132, 133, 134, 135, 306, and 315.